

**United States Court of Appeals**  
**FOR THE EIGHTH CIRCUIT**

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No. 05-1520

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Anthony C. Kenney,

Appellant,

v.

Swift Transportation, Inc.,

Appellee.

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\* Appeal from the United States

\* District Court for the

\* Eastern District of Arkansas.

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\* [UNPUBLISHED]

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Submitted: December 28, 2005

Filed: December 29, 2005

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Before MELLOY, HANSEN, and GRUENDER, Circuit Judges.

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PER CURIAM.

Anthony Kenney appeals after the magistrate judge<sup>1</sup> denied his motion to reopen his employment-discrimination case that had been administratively terminated pending the outcome of binding arbitration. Having carefully reviewed the record and the parties' submissions on appeal, we cannot discern whether Kenney is appealing the magistrate judge's order or the underlying arbitration award. If he seeks to appeal the order, this court lacks jurisdiction because the parties did not consent to the magistrate judge's authority to enter a final, appealable order, and absent that consent,

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<sup>1</sup>The Honorable John F. Forster, Jr., United States Magistrate Judge for the Eastern District of Arkansas.

Kenney was required to seek review in the district court before appealing to this court. See LeGear v. Thalacker, 46 F.3d 36, 36-37 (8th Cir. 1995) (per curiam). If he seeks to appeal the arbitration award, this court lacks jurisdiction because neither the district court nor the magistrate judge entered a final order, an appealable interlocutory order, or any decision at all regarding the merits of the arbitration award. See 28 U.S.C. § 1291 (courts of appeals shall have jurisdiction from all final decisions of district courts).

Accordingly, we dismiss the appeal for lack of jurisdiction. We deny appellee's pending motion.

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